



Direction Decision

by **K R Saward Solicitor**

an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs

Decision date: 25 February 2020

Ref: FPS/L3055/14D/12

Nottinghamshire County Council

Application to add a bridleway situated in the parish of Mansfield Woodhouse running from New Mill Lane to Mansfield Woodhouse Bridleway 31.

- An application was made by Stephen Parkhouse on behalf of Nottinghamshire Ramblers to Nottinghamshire County Council for an order to modify its Definitive Map and Statement of Public Rights of Way under Section 53(5) of the Wildlife and Countryside Act 1981 ('the 1981 Act').
 - The Council's reference for the application is 1136.
 - The certificate attached to the application, as required under Paragraph 2(3) of Schedule 14 of the 1981 Act, is dated 14 May 2015.
 - A representation has been made by the applicant under Paragraph 3(2) of Schedule 14 of the 1981 Act seeking a direction from the Secretary of State to be given to the Council to determine the application.
 - The representation is dated 14 November 2019.
 - The Council was consulted about the representation on 19 November 2019 and its response is dated 31 December 2019.
-

Decision

1. The Council is directed to determine the above-mentioned application.

Reasons

2. Schedule 14 of the 1981 Act sets out provisions for applications made under section 53(5) for an order which makes modifications to the Definitive Map and Statement.
 3. Authorities are required to investigate applications as soon as reasonably practicable and, after consulting the relevant district and parish councils, decide whether to make an order on the basis of the evidence discovered. Applicants have the right to ask the Secretary of State to direct a surveying authority to reach a decision on an application if no decision has been reached within 12 months of the authority's receipt of certification that the applicant has served notice of the application on affected landowners and occupiers.
 4. An applicant's right to seek a direction from the Secretary of State gives rise to the expectation of a determination of that application within 12 months under normal circumstances. At the end of 2019, the application was positioned at number 90 out of 137 on the Council's list of applications awaiting determination.
 5. Current guidance is contained within Rights of Way Circular 1/09 Version 2,
-

- October 2009¹. This explains² that the Secretary of State in considering whether, in response to such a request, to direct an authority to determine an application for an order within a specified period, will take into account any statement made by the authority setting out its priorities for bringing and keeping the definitive map up to date, the reasonableness of such priorities, any actions already taken by the authority or expressed intentions of further action on the application in question, the circumstances of the case and any views expressed by the applicant. Each case must therefore be considered in light of its particular circumstances.
6. The application was supported by 54 user evidence forms detailing use over a 45-year period.
 7. The Council determines applications in accordance with Policy A5-2 of its Rights of Way Management Plan (2018-2026). This provides that applications for Definitive Map Modification Orders will be processed chronologically by order of receipt. The policy identifies five exceptions which are expressed to be in no particular order. They are: (i) where the public benefit to be gained is of more than limited impact (ii) where a claim affects a householder in proving the existence or non-existence of a right of way (iii) a claimed route is triggered by an event such as fencing off the line of a regularly used path (iv) where an application is claimed on 20-year use the personal circumstances of path users will be taken into account, and (v) where a claimed route is under threat due to development or major road schemes.
 8. The Council does not rank its applications against the exceptions listed within Policy A5-2. Instead, where the circumstances appear to be exceptional, Officers may apply the policy in order to expedite a particular case.
 9. The Council acknowledges that the application would certainly be of public benefit to meet the first criterion as the route claimed would extend an off-road circuit for horse riders and cyclists when used in conjunction with existing recorded bridleways. The Council points out though that this exception applies to a majority of its pending applications yet to be determined.
 10. The second and third criteria are not considered to be met. In terms of the fourth criterion, the Council acknowledges that some of the users are elderly but says it has not been possible to verify their personal circumstances. Even so, it seems to me that if it is known some users are elderly, consideration ought to be given to the possible impact a delay might have on those users being able to give evidence if necessary.
 11. In the representation, it is stated that the claimed bridleway crosses a field that has been designated for housing in the Mansfield Local Plan. The route is described as an important connection to open countryside and the wider bridleway network that needs adding to the DMS so that it can be taken into account in the planning process. If the route is at risk from development, it would trigger the fifth criterion and heighten the impetus for a resolution without further delay.
 12. The Council has contacted Mansfield District Council as the local planning authority for the area in question. It responded that the area "is not allocated for development in either the adopted Local Plan (1998) nor emerging Local

¹ Published by the Department for Environment, Food and Rural Affairs.

² At paragraph 4.9

- Plan.” The local planning authority also confirmed that there are not any current applications to develop this land. In the light of that clarification, I am not satisfied the claimed route is at a foreseeable risk from development.
13. In consequence, the Council considers that possibly only one criterion is met. It further suggests that there does not appear to be a high degree of public interest in the matter as no enquiries have been made of its Countryside Access Section over progress of the application. In my view, that is not a reliable means of gauging public interest and it is not one of the policy criteria in any event.
 14. Policy A5-2 does not require all criteria to be met. As drafted, any one criterion could suffice to trigger an application being given priority status. That appears to reflect the approach taken from the examples provided by the Council of current applications which have been taken out of sequence. One of those applications involves in excess of 200 user evidence forms for multiple routes. In another example, a landowner has formally dedicated the application route.
 15. Clearly, not all applications can be expedited. It is not unreasonable for the Council to take applications in order of submission date with provision to expedite those where there is justification in line with Policy A5-2. The issue emerging is the length of time before this application will be determined.
 16. Based on current staffing levels and Officer time dedicated to this type of casework, the Council estimates it will take a minimum of about 10 years before a decision is taken on this application. The application has already been awaiting determination for almost 5 years. Another 10 years is not reasonable irrespective of how many exceptions the application fulfils under Policy A5-2.
 17. I recognise that the Council has a large number of outstanding applications and limited resources available. Nevertheless, the Council has a statutory duty to keep the Definitive Map and Statement up-to-date. Difficulties complying with that duty due to resourcing issues cannot be considered as an exceptional circumstance. Circular 1/09 is clear that Authorities should ensure that sufficient resources are devoted to meeting their statutory duties with regard to the protection and recording of public rights of way.
 18. There are many other applications ranked higher in the Council’s list. To issue a direction to make a determination would disadvantage those who have been waiting longer. It could also potentially delay applications which warrant greater urgency under the Council’s prioritisation system.
 19. However, those factors do not justify a direction not being given in this instance when the 12-month period³ has now long expired. The applicant is entitled to expect his application to be determined within a finite and reasonable period. No exceptional circumstances have been advanced by the Council.
 20. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. I also recognise the Council has other applications under way with others that it will need to commence in coming months. A further period of 9 months has been allowed to make a determination.

³ The 12-month period commences on the date a valid certificate is submitted to the order making authority in accordance with paragraph 2(3) of Schedule 14

Direction

On behalf of the Secretary of State for Environment, Food and Rural Affairs and pursuant to Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981, **I HEREBY DIRECT** the Nottinghamshire County Council to determine the above-mentioned application not later than 9 months from the date of this decision.

K R Seward

INSPECTOR